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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

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MUR: 5559

DATE COMPLAINT FILED: October 8, 2004

DATE OF NOTIFICATION: October 15, 2004

DATE ACTIVATED: March 3, 2005

EXPIRATION OF STATUTE OF LIMITATIONS:
September 7, 2009

COMPLAINANT:

Dennis Baylor

RESPONDENTS:

Stephen Adams
AOA Holding LLC

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Adams Outdoor Advertising LP¹
 Adams Outdoor Advertising, Inc.

RELEVANT STATUTES AND
 REGULATIONS:

2 U.S.C. § 431(17)
 2 U.S.C. § 441a(a)(1)(A)
 2 U.S.C. § 441b(a)
 11 C.F.R. § 100.16(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

MUR. 5559 involve advertising expressly
 advocating the re-election of President Bush that appeared on billboards owned or leased by

¹ The complaint used the name of Adams Outdoor Advertising LLP. Minnesota Secretary of State records, however, indicate that Adams Outdoor Advertising LLP is a limited partnership rather than a limited liability (footnote continued on next page)

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1 business entities affiliated with Stephen Adams. According to FEC records, Adams filed a report
2 of an independent expenditure on October 28, 2004, reflecting \$1 million in payment for the
3 advertising. The MUR

4 complaint allege that Adams did not personally pay for the advertising, but instead directed his
5 affiliated business entities to absorb those costs, in violation of the prohibition on corporate
6 expenditures or contributions. The complaint further alleges that if Adams did
7 personally pay for the advertising, such payments would have exceeded his individual
8 contribution limit.

9
10 As discussed in more detail below, it appears that Adams made an individual independent
11 expenditure,

12 Therefore, this Office recommends

13
14 that the Commission find no reason to believe
15 that Adams made an excessive personal contribution or that the other respondents made
16 prohibited corporate contributions.

17 **II. FACTS**

18 **A. The Billboards**

19 Between September 7 and November 2, 2004, advertisements expressly advocating the
20 reelection of President Bush appeared on billboards throughout Michigan, Pennsylvania,
21 Wisconsin and South Carolina. Response at 9-10 and Attachments 6, 7; Aff. of Stephen Adams

partnership, and as such the correct designation should be "LP" rather than "LLP."

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(“Adams Aff.”), Nov. 12, 2004, at ¶ 13; Aff. of Randall Romig (“Romig Aff.”), Nov. 12, 2004, at ¶¶ 18, 21-2. The advertising consisted of different displays of “catch phrase[s]” such as “Defending Our Nation,” “It’s About Our National Security,” “A Nation Secure,” “One Nation Under God,” and “Boots Or Flip-Flops?” Response at 4 and Attachment 1 (emphasis in original). These catch phrases “appeared in white type on a blue background immediately above the campaign slogan ‘BushCheney04’ superimposed on the red and white stripes of the American flag.” *Id.* The advertising also originally carried a disclaimer that read, “Personal message paid for and sponsored by Stephen Adams.” *Id.* at 13-4.

According to the complaint the billboards on which the advertising appeared were owned or leased by business entities affiliated with Stephen Adams. In his affidavit provided with the response, Adams admits that he owns AOA Holding Company, which in turn has a 76% interest in Adams Outdoor Advertising Limited Partnership, of which Adams Outdoor Advertising, Inc. is the managing general partner (collectively “AOA”). He also admits that “on or about June 1, 2004,” he “hired AOA to design and implement” the multi-state outdoor advertising campaign in issue. Adams Aff. at ¶ 2.²

After Adams hired AOA, Randall Romig, AOA’s Vice President for Real Estate, who personally handled the advertising campaign, contacted Eric Rubin, an attorney whose law firm is general counsel to the billboard industry’s association, for legal advice regarding the proposed advertising. In a letter to Romig from Rubin dated June 10, 2004 (Attachment 4 to the response),

² Adams also states in his affidavit that he is Chairman of the Board of Directors of AOA, “but that office is a position of oversight and I am not involved in the day-to-day operations of AOA.” Adams Aff. at ¶ 3. Adams reportedly has numerous business interests other than AOA. *Id.* at ¶ 2; *School of Music get \$10 million*, Yale Bulletin & Calendar, Oct 25–Nov 1, 1999, at <http://www.yale.edu/opa/v28.n10/story1.html>; *History of AGI*, <http://www.affinitygroup.com/history1.cfm>. SEC filings in 2001 corroborate the information provided by Adams in his affidavit concerning the structure of AOA, and we have located no other public information to the contrary. (footnote continued on next page)

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1 Rubin stated that pursuant to "Federal Election Laws," Adams would have to be personally
2 responsible for all direct and indirect costs associated with the Advertisements "without offset or
3 reimbursement by [AOA]" to avoid making any corporate contributions, and that such costs
4 should be calculated by AOA at the rate it "would normally charge advertisers for comparable
5 services." Further, the letter stated the advertising effort "must be truly an individual and
6 personal effort by [Adams] in complete isolation from any political organization," and
7 admonished Adams to avoid any communication or coordination with the Bush campaign or its
8 agents, even after the advertising commenced. Romig forwarded the Rubin letter to Adams with
9 an attached memorandum on or about June 19, 2004; Adams received it on or about June 21,
10 2004. Adams Aff. at ¶ 7; response at 6 and Attachment 4. Adams avers that he "strictly
11 followed Mr. Rubin's advice," including "no contact whatsoever with any federal candidate,
12 candidate's authorized committee, or their agents, or any political party or its agents with regard
13 to the advertising campaign." Adams Aff. at ¶¶ 10 and 11; *see also* Romig Aff. at ¶¶ 14, 15
14 (same affirmations).

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20 According to affidavits, Adams gave AOA a budget of \$1 million for the advertising
21 campaign. Adams Aff. at ¶ 4; Romig Aff. at ¶ 17. He received several contracts from AOA

1 between August 21 and August 27, 2004, which he signed and returned to Romig during the last
2 week of August, 2004.”³ Adams Aff. at ¶ 12; Romig Aff. at ¶ 21. A proposal dated July 23,
3 2004, reflected a “grand total” for the advertising campaign of \$977,448.00. Response at
4 Attachment 7; Adams Aff. at ¶ 13; Romig Aff. at ¶ 22. Adams avers he paid for the campaign
5 entirely from his personal funds, and he decided to overpay by \$22,552, “just to be on the safe
6 side,” to make sure no AOA funds were used for any potential cost overruns. Adams Aff. at
7 ¶ 13; response at 11; Romig Aff. at ¶¶ 20, 22. According to the response, “internal AOA
8 documents demonstrate conclusively that AOA charged Mr. Adams the normal and usual charge
9 for the services it provided to Mr. Adams in connection with the advertising campaign.”⁴
10 Response at 12-3; *see also* Romig Aff. at ¶¶ 16, 18-21. On September 7, 2004, the first day the
11 advertising was scheduled to commence, Adams wired \$1 million to AOA as payment for the
12 advertising campaign. Adams Aff. at ¶ 13; Romig Aff. at ¶ 22; response at Attachment 8.

³ Two of what appear to be such contracts from “Adams Outdoor Advertising of Lehigh Valley” were attached to the response as Attachment 6. One is a “Poster Display Contract” and the other is a “Bulletin Display Contract.” These contracts were purportedly signed by AOA on August 24, 2004, but do not clearly show Adams’ signature or the date he executed them. These contracts, apparently provided as examples, were only for advertising in Pennsylvania totaling \$154,200.

⁴ No such “internal AOA documents” were attached to the response, but there is no evidence indicating that AOA did not charge Adams the usual and normal rates for the advertising campaign. While we do not have any price sheets from AOA, rough calculations and comparisons with average rates listed on www.billboard-ads.com show a general correlation with the rates AOA charged Adams, with some differences that likely are attributable to the individual markets in which the billboards were displayed.

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5 **III. ANALYSIS**

6 A. There Were No Violations Concerning Corporate Expenditures and Individual
7 Contribution Limits
8

9 Based upon the available information, including sworn affidavits from Adams and
10 Romig, and with no information to the contrary, it appears that AOA, acting as a vendor,
11 charged Adams its "usual and normal" rates, *supra* n.4, and that Adams used only his personal
12 funds for the advertising campaign. Documents purporting to show a wire transfer on
13 September 7, 2004 of \$1 million from Adams' bank account to AOA's bank accounts were
14 attached to the response as Attachment 8. As noted previously, Adams claims not only to have
15 personally paid the entire costs of the advertising campaign at the usual and customary rates, but
16 to have deliberately overpaid for it by more than \$20,000 to ensure no AOA funds were used for
17 any potential "unusual indirect costs" or overruns, and "to ensure that AOA did not
18 inadvertently make an in-kind contribution to the Bush-Cheney '04 campaign." Response at 8-
19 13 and Attachment 4; Adams Aff. at ¶¶ 7-9, 13; Romig Aff. at ¶¶ 7, 16, 20-22. Because AOA
20 appears to have charged Adams its "usual and normal" charge, it does not appear to have made
21 a corporate expenditure. *See* 11 C.F.R. § 100.111(e)(1). Accordingly, this Office recommends
22 that the Commission find no reason to believe that Stephen Adams, Adams Outdoor
23 Advertising, Inc., Adams Outdoor Advertising LP, or AOA Holding LLC violated 2 U.S.C.

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1 § 441b(a) by making or consenting to prohibited corporate expenditures, and close the file with
2 respect to all of these respondents except Stephen Adams.

3 Further, it appears that Adams made an "independent expenditure" in paying for the
4 advertising campaign. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16(a). Adams concedes there is no
5 dispute that the advertising expressly advocated the reelection of President Bush. Response at 4.
6 Both Adams personally, and Romig as the AOA employee principally responsible for
7 implementing the advertising campaign, aver that the advertising campaign was designed and
8 implemented "without any contact whatsoever" with any federal candidate, candidate's
9 authorized committee or its agents, or any political party or its agents. Again, we have no
10 information to the contrary. As limits on individual campaign contributions do not apply to
11 independent expenditures, this Office recommends that the Commission find no reason to believe
12 that Stephen Adams violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions. Due
13 to the fact that MUR 5559 alleged only violations of 2 U.S.C. §§ 441a(a)(1)(A) and 441b(a), this
14 Office recommends that the MUR 5559 file be closed.

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IV. RECOMMENDATIONS

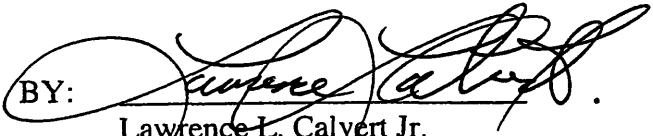
- 1.
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- 3.
4. Find no reason to believe Stephen Adams violated 2 U.S.C. § 441a(1)(A) or 2 U.S.C. § 441b(a).
5. Find no reason to believe Adams Outdoor Advertising, Inc., Adams Outdoor Advertising, LP, or AOA Holding LLC violated 2 U.S.C. § 441b(a), and close the file as to these respondents.
6. Close the file in MUR 5559.
- 7.
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- 9.
10. Approve the appropriate letters.

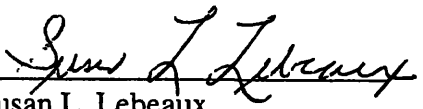
Lawrence H. Norton
General Counsel

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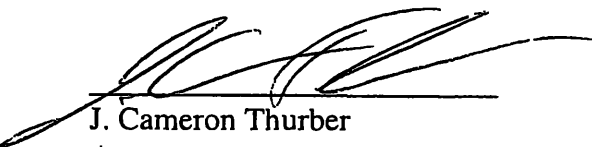
Date

BY:


Lawrence L. Calvert Jr.
Deputy Associate General Counsel
for Enforcement



Susan L. Lebeaux
Assistant General Counsel



J. Cameron Thurber
Attorney

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